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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 CLIFFORD PATTERSON,
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Petitioner,

v.

JEFFREY BEARD, *Secretary of the
California Department of Corrections
and Rehabilitation,*

Respondent.

CASE NO. 13cv1536-MMA (DHB)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

[Doc. No. 15]

**DENYING FIRST AMENDED
PETITION FOR WRIT OF
HABEAS CORPUS**

[Doc. No. 5]

**DECLINING TO ISSUE
CERTIFICATE OF
APPEALABILITY**

Petitioner Clifford Patterson, a state prisoner proceeding *pro se*, filed a first amended petition for writ of habeas corpus (“petition”) pursuant to 28 U.S.C. § 2254, challenging his May 25, 2010 conviction and the resulting sixteen-year sentence for assault with a deadly weapon. *See* Doc. No. 5. Petitioner raises the following grounds for relief: (1) breach of plea agreement relating to a prior conviction; (2) ineffective assistance of counsel during sentencing of a prior

conviction; (3) ineffective assistance of counsel during trial based on the cumulative effective of numerous errors; (4) prosecutorial misconduct; and (5) judicial errors. Respondent answered the Petition. *See* Doc. No. 12. Petitioner did not file a Traverse.

The matter was referred to United States Magistrate Judge David H. Bartick for preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), and Civil Local Rule HC.2. Judge Bartick issued a thorough and well-reasoned Report recommending the Court deny the petition. *See* Doc. No. 15.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the Court must “make a de novo determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].” 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). Although the Court granted Petitioner four separate extensions of time to do so, Petitioner has not filed an objection to the Report and Recommendation, and the time to do so has now expired. *See* Doc. Nos. 17, 19, 23, 27.¹

Accordingly, the Court concludes Judge Bartick issued an accurate report and well-reasoned recommendation. The Court **ADOPTS** the Report and Recommendation in its entirety and **DENIES** Petitioner’s first amended petition with prejudice.

CERTIFICATE OF APPEALABILITY

Rule 11 of the Federal Rules Governing Section 2254 Cases states that “the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability is not issued unless

¹ The Court notes that it declined Plaintiff’s ex parte request for a fifth extension of time to file an objection. *See* Doc. No. 30. The Court reasoned that because Petitioner had previously received four extensions of time—and therefore had almost six months to file an objection—Petitioner had sufficient time to file an objection and had not demonstrated good cause under Federal Rule of Civil Procedure 6(b) to warrant a further extension of time. *See id.*

1 there is “a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
2 2253(c)(2). Under this standard, a petitioner must show that reasonable jurists could
3 debate whether the petition should have been resolved in a different manner or that
4 the issues presented were adequate to deserve encouragement to proceed further.
5 *Miller–El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529
6 U.S. 473, 484 (2000)). For the reasons set forth in the Report and Recommendation
7 and incorporated herein, the Court finds that this standard has not been met and
8 therefore **DECLINES** to issue a certificate of appealability in this case.

9 **CONCLUSION**

10 Based on the foregoing, the Court **ADOPTS** the Report and Recommendation
11 in its entirety and **DENIES** Petitioner’s first amended petition with prejudice. The
12 Court further **DECLINES** to issue a certificate of appealability.

13 **IT IS SO ORDERED.**

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15 DATED: January 30, 2015

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17 Hon. Michael M. Anello
18 United States District Judge
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